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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GREGORY P. TURNER,
Plaintiff,

v.

H. GASCA, et al.,
Defendants.

Case No. 18-cv-01799 NC (PR)

ORDER OF SERVICE

Plaintiff, a state prisoner proceeding *pro se*, has filed a civil rights complaint, pursuant to 42 U.S.C. § 1983.¹ Plaintiff has been granted leave to proceed in forma pauperis in a separate order. For the reasons that follow, the Court orders service upon Defendants.

BACKGROUND

I. Standard of Review

A federal court must engage in a preliminary screening of any case in which a

¹ Plaintiff has consented to magistrate judge jurisdiction. Dkt. No. 2.

1 prisoner seeks redress from a governmental entity or officer or employee of a
2 governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any
3 cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a
4 claim upon which relief may be granted, or seek monetary relief from a defendant who is
5 immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). *Pro se* pleadings must be liberally
6 construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

7 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1)
8 that a right secured by the Constitution or laws of the United States was violated and (2)
9 that the violation was committed by a person acting under the color of state law. *See West*
10 *v. Atkins*, 487 U.S. 42, 48 (1988).

11 **II. Plaintiff's Claims**

12 Liberally construing Plaintiff's complaint, Plaintiff has stated a cognizable claim
13 that Defendants used excessive force upon him in violation of the Eighth Amendment.

14 **CONCLUSION**

15 1. The Clerk of the Court shall mail a Notice of Lawsuit and Request for
16 Waiver of Service of Summons, two copies of the Waiver of Service of Summons, a copy
17 of the complaint and all attachments thereto, a magistrate judge jurisdiction consent form,
18 and a copy of this order to Correctional Officers H. Gasca and A. Perez at Salinas Valley
19 State Prison. The Clerk of the Court shall also mail a courtesy copy of the complaint and a
20 copy of this order to the California Attorney General's Office. Additionally, the Clerk
21 shall mail a copy of this order to Plaintiff.

22 2. Defendants are cautioned that Rule 4 of the Federal Rules of Civil Procedure
23 requires her to cooperate in saving unnecessary costs of service of the summons and
24 complaint. Pursuant to Rule 4, if Defendants, after being notified of this action and asked
25 by the court, on behalf of Plaintiff, to waive service of the summons, fail to do so, they will

1 be required to bear the cost of such service unless good cause be shown for their failure to
2 sign and return the waiver form. If service is waived, Defendants will be required to serve
3 and file an answer within sixty (60) days from the date on which the request for waiver
4 was sent to them. Defendants are asked to read the statement set forth at the bottom of the
5 waiver form that more completely describes the duties of the parties with regard to waiver
6 of service of the summons. If service is waived after the date provided in the Notice but
7 before Defendants have been personally served, the Answer shall be due sixty (60) days
8 from the date on which the request for waiver was sent or twenty (20) days from the date
9 the waiver form is filed, whichever is later.

10 3. No later than sixty (60) days from the date the waivers are sent from the
11 court, Defendants shall file a motion for summary judgment or other dispositive motion
12 with respect to the cognizable claims in the complaint. At that time, Defendants shall also
13 submit the magistrate judge jurisdiction consent form. Any motion for summary judgment
14 shall be supported by adequate factual documentation and shall conform in all respects to
15 Rule 56 of the Federal Rules of Civil Procedure. A motion for summary judgment also
16 must be accompanied by a *Rand* notice so that Plaintiff will have fair, timely and adequate
17 notice of what is required of him in order to oppose the motion. *Woods v. Carey*, 684 F.3d
18 934, 939 (9th Cir. 2012) (notice requirement set out in *Rand v. Rowland*, 154 F.3d 952 (9th
19 Cir. 1998), must be served concurrently with motion for summary judgment). Defendants
20 are advised that summary judgment cannot be granted, nor qualified immunity found, if
21 material facts are in dispute. If Defendants are of the opinion that this case cannot be
22 resolved by summary judgment, they shall so inform the court prior to the date the
23 summary judgment motion is due.

24 4. Plaintiff's opposition to the dispositive motion shall be filed with the court
25 and served on Defendants no later than twenty-eight (28) days from the date Defendants'

1 motion is filed. Plaintiff is advised to read Rule 56 of the Federal Rules of Civil Procedure
2 and *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) (holding party opposing summary
3 judgment must come forward with evidence showing triable issues of material fact on
4 every essential element of his claim).

5 5. Defendants shall file a reply brief no later than fourteen (14) days after
6 Plaintiff's opposition is filed.

7 6. All communications by Plaintiff with the court must be served on
8 Defendants or Defendants' counsel once counsel has been designated, by mailing a true
9 copy of the document to Defendant or Defendants' counsel.

10 7. Discovery may be taken in accordance with the Federal Rules of Civil
11 Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) is
12 required before the parties may conduct discovery.

13 8. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the
14 court informed of any change of address by filing a separate paper with the clerk headed
15 "Notice of Change of Address." He also must comply with the court's orders in a timely
16 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute
17 pursuant to Federal Rule of Civil Procedure 41(b).

18 **IT IS SO ORDERED.**

19
20 DATED: May 29, 2018


NATHANAEL M. COUSINS
United States Magistrate Judge